


CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS David Potts 2397 Hilltop Road Manheim, PA 17545 (b) County of Residence of First Listed Plaintiff <u>Lancaster</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i>		DEFENDANTS Moravian Manors, Inc. 300 W. Lemon Street Lititz, PA 17543 County of Residence of First Listed Defendant <u>Lancaster</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i> NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)																									
(c) Attorneys (Firm Name, Address, and Telephone Number) Graham F. Baird, Law Office of Eric A. Shore 2 Penn Center, 1500 JFK Blvd, Suite 1240, Philadelphia PA 19102 Tel: 267-546-0131																											
II. BASIS OF JURISDICTION (Place an "X" in One Box Only)		III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																									
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant		<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)																									
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V. ORIGIN (Place an "X" in One Box Only)																											
<input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from Another District (specify) <input type="checkbox"/> 6 Multidistrict Litigation - Transfer <input type="checkbox"/> 8 Multidistrict Litigation - Direct File																											
VI. CAUSE OF ACTION		Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>42 U.S.C.A. § 12101 et seq</u> Brief description of cause: <u>Americans with Disabilities Act</u>																									
VII. REQUESTED IN COMPLAINT:		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ <u>\$150,000</u>																									
VIII. RELATED CASE(S) IF ANY		CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No																									
(See instructions):		JUDGE _____ DOCKET NUMBER _____																									
DATE <u>4/16/2020</u> SIGNATURE OF ATTORNEY OF RECORD 																											
FOR OFFICE USE ONLY																											
RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____																											

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

David Potts	:	CIVIL ACTION
	:	
v.	:	
	:	
Moravian Manors, Inc.	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

4/16/2020	Graham F. Baird, Esq.	David Potts
Date	Attorney-at-law	Attorney for
267-546-0131	215-944-6124	GrahamB@ericshore.com
Telephone	FAX Number	E-Mail Address

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 2397 Hilltop Road, Manheim, PA 17545

Address of Defendant: 300 W. Lemon Street, Lititz, PA 17543

Place of Accident, Incident or Transaction: 300 W. Lemon Street, Lititz, PA 17543

RELATED CASE, IF ANY:

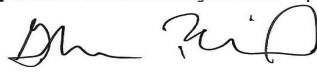
Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when *Yes* is answered to any of the following questions:

- | | | |
|--|------------------------------|--|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 4/16/2020


Attorney-at-Law / Pro Se Plaintiff

92692

Attorney I.D. # (if applicable)

CIVIL: (Place a ✓ in one category only)

A. Federal Question Cases:

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
- ☐ 2. FELA
- ☐ 3. Jones Act-Personal Injury
- ☐ 4. Antitrust
- ☐ 5. Patent
- ☐ 6. Labor-Management Relations
- ☒ 7. Civil Rights
- ☐ 8. Habeas Corpus
- ☐ 9. Securities Act(s) Cases
- ☐ 10. Social Security Review Cases
- ☐ 11. All other Federal Question Cases

(Please specify): _____

B. Diversity Jurisdiction Cases:

- ☐ 1. Insurance Contract and Other Contracts
- ☐ 2. Airplane Personal Injury
- ☐ 3. Assault, Defamation
- ☐ 4. Marine Personal Injury
- ☐ 5. Motor Vehicle Personal Injury
- ☐ 6. Other Personal Injury (Please specify): _____
- ☐ 7. Products Liability
- ☐ 8. Products Liability – Asbestos
- ☐ 9. All other Diversity Cases

(Please specify): _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Graham F. Baird, counsel of record or pro se plaintiff, do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:

☐ Relief other than monetary damages is sought.

DATE: 4/16/2020


Attorney-at-Law / Pro Se Plaintiff

92692

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

No.

6. Supplemental jurisdiction over the Plaintiff's state law claim is conferred pursuant to 28 U.S.C. § 1367.

7. Plaintiff has satisfied the administrative prerequisites and exhausted his administrative remedies prior to bringing this civil rights claim. [Exh. A.]

8. Pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2), venue is properly laid in this district because Defendant conducts business in this district, and because a substantial part of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district. Plaintiff was working in the Eastern District of Pennsylvania at the time of the illegal actions by Defendant as set forth herein.

II. Operative Facts.

9. In or around January of 2010, Defendant hired Plaintiff as a maintenance technician.

10. On July 7, 2019, Plaintiff, who suffers from alcoholism, called Defendant's supervisor Dale and stated he would not be in to work as he was not feeling well.

11. That night, on advice of his family, Plaintiff made the decision to enter a rehab clinic to get help with his alcoholism.

12. On July 8, 2019, Plaintiff called Defendant and spoke with Jackie, and stated he was calling out of work to get help with his alcoholism.

13. Plaintiff additionally informed Jackie during this call of his desire to utilize FMLA to secure time off to address his addiction.

14. On July 9, 2019, Plaintiff called Defendant's human resources department and spoke with a representative, Lydia, to ask if the FMLA paperwork could be sent to Retreat, the treatment facility he would be attending as an inpatient.

15. Lydia agreed, and requested the fax number in order to forward the paperwork.

16. At that time, Plaintiff had not yet entered the facility and therefore did not have the fax number yet.

17. On July 9, 2019, following this phone call, Plaintiff was admitted to Retreat to begin his inpatient stay.

18. On July 10, 2019, Plaintiff obtained Retreat's fax number and called Lydia from his counselor's office to provide this number so that the FMLA paperwork could be forwarded to him.

19. Later that day, while Plaintiff was attending a group meeting, he was advised by the counselor that he had a phone call.

20. Plaintiff left his group meeting to answer the phone.

21. On the phone was Defendant's human resources vice president, Amy Blough, who stated Plaintiff was ineligible for FMLA leave as he had been terminated as of July 8, 2019.

22. Ms. Blough additionally indicated that Plaintiff's medical coverage had ceased as well on July 8, 2019, and therefore his stay at Retreat would not be covered.

23. Despite Retreat's counselor's and Plaintiff's family's best efforts, he was only able to stay at Retreat for one (1) week.

24. Plaintiff subsequently received a letter from Defendant indicating that his termination was due to "performance issues" which had purportedly been outlined to Plaintiff during a meeting on April 22, 2019.

25. The letter indicated that Plaintiff was behind on his preventative maintenance work, and that he was "passing off" assignments to other workers.

26. Plaintiff had never been told there was a problem with “passing off” assignments; to the contrary, Plaintiff and the other maintenance technicians would routinely add each other to work orders so they could help each other out and finish as much work as possible.

27. Plaintiff was not the only worker to do this; additionally, he was being assigned up to and over one hundred (100) work orders, while other technicians were given approximately thirty (30) to forty (40).

28. The letter also stated that Plaintiff had “passed off” work assignments on several different dates following that meeting, up to June 18, 2019.

29. At no time was Plaintiff ever approached by Defendant to indicate that this was an issue, and Plaintiff believes there were no other technicians disciplined for this behavior.

30. Following his forced departure from Retreat due to the loss of his insurance, Plaintiff was in a state of despair and drank to excess such that he ended up admitted to the hospital in the intensive care unit for approximately two (2) weeks until his condition stabilized.

31. Defendants failed to reasonably accommodate Plaintiff’s disability.

32. Defendants failed to meaningfully engage in an interactive process towards the development of a reasonable accommodation for Plaintiff’s disability.

33. Plaintiff was terminated immediately following notice of his intent to utilize FMLA leave.

34. At all times material hereto, Defendant was hostile to Plaintiff’s diagnosed medical condition and need to take FMLA leave, and terminated him as a result of that animus.

35. As a direct and proximate result of Defendant’s conduct in terminating Plaintiff, he sustained great economic loss, future lost earning capacity, lost opportunity, loss of future

wages, as well emotional distress, humiliation, pain and suffering and other damages as set forth below.

III. Causes of Action.

COUNT I– AMERICANS WITH DISABILITIES ACT (42 U.S.C.A. § 12101 et seq) (Plaintiff v. Defendants)

36. Plaintiff incorporates paragraphs 1-35 as if fully set forth at length herein.

37. At all times material hereto, and pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, et seq., an employer may not discriminate against an employee based on a disability.

38. Plaintiff is a qualified employee and person within the definition of Americans with Disabilities Act of 1990, 42 U.S.C. §12101, et seq.

39. Defendant is an “employer” and thereby subject to the strictures of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, et seq.

40. At all times material hereto, Plaintiff had a qualified disability, as described above.

41. Defendant failed to accommodate or otherwise engage in a meaningful back and forth discussion towards the development of a reasonable accommodation.

42. Defendant’s conduct in terminating Plaintiff is an adverse action, was taken as a result of his disability and constitutes a violation of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, et seq.,

43. As a proximate result of Defendant’s conduct, Plaintiff sustained significant damages, including but not limited to: great economic loss, future lost earning capacity, lost opportunity, loss of future wages, loss of front pay, loss of back pay, liquidated damages as well

as emotional distress, mental anguish, humiliation, pain and suffering, consequential damages and Plaintiff has also sustained work loss, loss of opportunity, and a permanent diminution of his earning power and capacity and a claim is made therefore.

44. As a result of the conduct of Defendant's owners/management, Plaintiff hereby demands punitive damages.

45. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, et seq Plaintiff demands attorneys fees and court costs.

**COUNT II – VIOLATION OF FMLA—INTERFERENCE
(29 U.S.C. §2601 et seq.)**

46. Plaintiff incorporates paragraphs 1-45 as if fully set forth at length herein.

47. As set forth above, Plaintiff was entitled to medical leave pursuant to the FMLA, 29 U.S.C. §2601, et seq..

48. As described above, Defendants interfered with, restrained and denied Plaintiff's exercise and/or attempts to exercise his rights under the Family and Medical Leave Act.

49. As a proximate result of Defendant's conduct, Plaintiff sustained significant damages, including but not limited to: great economic loss, future lost earning capacity, lost opportunity, loss of future wages, loss of front pay, loss of back pay, as well as emotional distress, mental anguish, humiliation, pain and suffering, consequential damages and Plaintiff has also sustained work loss, loss of opportunity, and a permanent diminution of his earning power and capacity and a claim is made therefore.

50. As a result of the conduct of Defendant's owners/management, Plaintiff hereby demands punitive and/or liquidated damages.

51. Pursuant to the Family and Medical Leave Act of 1993, 29 U.S.C. §2601, et seq Plaintiff demands attorneys fees and court costs.

COUNT III – VIOLATION OF FMLA—RETALIATION
(29 U.S.C. §2601 et seq.)

52. Plaintiff incorporates paragraphs 1-51 as if fully set forth at length herein.

53. As set forth above, Plaintiff was entitled to medical leave pursuant to the FMLA, 29 U.S.C. §2601, et seq.

54. As described above, Defendant terminated Plaintiff's employment, an adverse action, in retaliation for her exercising his rights to take FMLA leave.

55. Defendant's motivation in terminating Plaintiff's employment was based, in part, upon his intent to utilize of FMLA leave.

56. As a proximate result of Defendant's conduct, Plaintiff sustained significant damages, including but not limited to: great economic loss, future lost earning capacity, lost opportunity, loss of future wages, loss of front pay, loss of back pay, as well as emotional distress, mental anguish, humiliation, pain and suffering, consequential damages and Plaintiff has also sustained work loss, loss of opportunity, and a permanent diminution of his earning power and capacity and a claim is made therefore.

57. As a result of the conduct of Defendant's owners/management, Plaintiff hereby demands punitive and/or liquidated damages.

58. Pursuant to the Family and Medical Leave Act of 1993, 29 U.S.C. §2601, et seq Plaintiff demands attorneys fees and court costs.

COUNT IV—PENNSYLVANIA HUMAN RELATIONS ACT
43 Pa.C.S.A. §951, et seq.
(Plaintiff v. Defendants)

59. Plaintiff incorporates paragraphs 1-58 as if fully set forth at length herein.

60. As set forth above, Plaintiff is a member of a protected class.

61. Defendant failed to accommodate or otherwise engage in a meaningful back and forth towards the development of a reasonable accommodation.

62. Defendant terminated Plaintiff's employment.

63. As set forth above, a motivating factor in the decision to terminate Plaintiff's employment is Plaintiff's disability.

64. Plaintiff suffered disparate treatment in the manner in which he was terminated as compared to similarly situated able-bodied employees, who received more favorable treatment by Defendant.

65. As such, Defendant violated the Pennsylvania Human Relations Act, 43 Pa.C.S.A. §951, et seq.

66. As a proximate result of Defendant's conduct, Plaintiff sustained significant damages, including but not limited to: great economic loss, future lost earning capacity, lost opportunity, loss of future wages, loss of front pay, loss of back pay, as well as emotional distress, mental anguish, humiliation, pain and suffering, consequential damages and Plaintiff has also sustained work loss, loss of opportunity, and a permanent diminution of earning power and capacity and a claim is made therefore.

67. As a result of the conduct of Defendant's owners/management, Plaintiff hereby demands punitive damages.


68. Plaintiff demands attorneys' fees and court costs.

IV. Relief Requested.

WHEREFORE, Plaintiff, DAVID POTTS demands judgment in his favor and against Defendant, MORAVIAN MANORS, INC., in an amount in excess of \$150,000.00 together with:

- A. Compensatory damages, including but not limited to: back pay, front pay, past lost wages, future lost wages. Lost pay increases, lost pay incentives, lost opportunity, lost benefits, lost future earning capacity, injury to reputation, mental and emotional distress, pain and suffering;
- B. Punitive damages;
- C. Liquidated damages;
- D. Attorneys fees and costs of suit;
- E. Interest, delay damages; and,
- F. Any other further relief this Court deems just proper and equitable.

LAW OFFICES OF ERIC A. SHORE, P.C.

BY: 

GRAHAM F. BAIRD, ESQUIRE
Two Penn Center
1500 JFK Boulevard, Suite 1240
Philadelphia, PA 19102

Attorney for Plaintiff, David Potts

Date: 4/16/2020

EXH. A

EEOC Form 161 (11/16)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **David Potts**
2397 Hilltop Road
Manheim, PA 17545

From: **Philadelphia District Office**
801 Market Street
Suite 1300
Philadelphia, PA 19107



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

530-2020-00468

Legal Unit,
Legal Technician

(267) 589-9700

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission



Jamie R. Williamson,
District Director

January 29, 2020

(Date Mailed)

Enclosures(s)

cc: **Jennifer Craighead Carey, Esq.**
BARLEY SNYDER LLP
126 East King Street
Lancaster, PA 17602

Graham F. Baird, Esq.
LAW OFFICES OF ERIC SHORE
Two Penn Center
1500 John F. Kennedy Boulevard, Suite 1240
Philadelphia, PA 19102

INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other
provisions of State law may be shorter or more limited than those described below.)*

PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Courts often require that a copy of your charge must be attached to the complaint you file in court. If so, you should remove your birth date from the charge. Some courts will not accept your complaint where the charge includes a date of birth. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit **before 7/1/10** -- *not* 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

NOTICE OF RIGHTS UNDER THE ADA AMENDMENTS ACT OF 2008 (ADAAA): The ADA was amended, effective January 1, 2009, to broaden the definitions of disability to make it easier for individuals to be covered under the ADA/ADAAA. A disability is still defined as (1) a physical or mental impairment that substantially limits one or more major life activities (actual disability); (2) a record of a substantially limiting impairment; or (3) being regarded as having a disability. *However, these terms are redefined, and it is easier to be covered under the new law.*

If you plan to retain an attorney to assist you with your ADA claim, we recommend that you share this information with your attorney and suggest that he or she consult the amended regulations and appendix, and other ADA related publications, available at http://www.eeoc.gov/laws/types/disability_regulations.cfm.

“Actual” disability or a “record of” a disability (note: if you are pursuing a failure to accommodate claim you must meet the standards for either “actual” or “record of” a disability):

- **The limitations from the impairment no longer have to be severe or significant** for the impairment to be considered substantially limiting.
- In addition to activities such as performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, thinking, concentrating, reading, bending, and communicating (more examples at 29 C.F.R. § 1630.2(i)), **“major life activities” now include the operation of major bodily functions**, such as: functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions; or the operation of an individual organ within a body system.
- **Only one** major life activity need be substantially limited.
- With the exception of ordinary eyeglasses or contact lenses, **the beneficial effects of “mitigating measures”** (e.g., hearing aid, prosthesis, medication, therapy, behavioral modifications) **are not considered** in determining if the impairment substantially limits a major life activity.
- An impairment that is **“episodic”** (e.g., epilepsy, depression, multiple sclerosis) or **“in remission”** (e.g., cancer) is a disability if it **would be substantially limiting when active**.
- An impairment **may be substantially limiting even though** it lasts or is expected to last **fewer than six months**.

“Regarded as” coverage:

- An individual can meet the definition of disability if an **employment action was taken because of an actual or perceived impairment** (e.g., refusal to hire, demotion, placement on involuntary leave, termination, exclusion for failure to meet a qualification standard, harassment, or denial of any other term, condition, or privilege of employment).
- “Regarded as” coverage under the ADAAA no longer requires that an impairment be substantially limiting, or that the employer perceives the impairment to be substantially limiting.
- The employer has a defense against a “regarded as” claim only when the impairment at issue is objectively **BOTH** transitory (lasting or expected to last six months or less) **AND** minor.
- A person is not able to bring a failure to accommodate claim *if* the individual is covered only under the “regarded as” definition of “disability.”

Note: Although the amended ADA states that the definition of disability “shall be construed broadly” and “should not demand extensive analysis,” some courts require specificity in the complaint explaining how an impairment substantially limits a major life activity or what facts indicate the challenged employment action was because of the impairment. Beyond the initial pleading stage, some courts will require specific evidence to establish disability. For more information, consult the amended regulations and appendix, as well as explanatory publications, available at http://www.eeoc.gov/laws/types/disability_regulations.cfm.